

## DISTRICT OF NEVADA

JAMAL DAMON HENDRIX,

## Order

V.

## Defendants

(ECF No. 33.)

Plaintiff filed his original complaint, which the court screened on October 16, 2019.

I against defendants J. Rivera (erroneously named as Riveria), J. Mason, V. Belt, D. Frazier, A.

unnecessary cell search in retaliation for Plaintiff's filing of grievances and civil litigation.

Plaintiff was also required to strip and show his body cavity, and the search was unnecessary and

grievances, which were reviewed by Wickham and Filson, but they did not act on the grievances.

because he alleged that they knew about the grievances *after* the search was completed, but there

1 was no allegation that they knew about the December 10, 2017 search and acquiesced to that  
2 search; therefore, Wickham and Filson were dismissed from Count I without prejudice. (ECF  
3 No. 4 at 3-5.)

4 The court also found that Plaintiff failed to state a colorable Eighth Amendment  
5 conditions of confinement claim in Count I, based on allegations that he was kept in the shower  
6 area in restraints for six hours without a bathroom break as he had not alleged that he ever asked  
7 to use the bathroom and was denied permission. In addition, the court stated that having to kneel  
8 on a wet shower floor, without more, is insufficient to state a colorable conditions of  
9 confinement claim. Therefore, these claims were dismissed without prejudice. (*Id.* at 6.)

10 Finally, the court dismissed Plaintiff's Fourteenth Amendment deprivation of property  
11 claim without prejudice. (*Id.* at 7.)

12 In addition, he was allowed to proceed with a retaliation claim in Count II against  
13 defendants Esquivel, Adams, Ornelas, Herrera, Filson and Wickham based on allegations that  
14 they conducted an unnecessary search of Plaintiff's cell in retaliation for his filing of grievances  
15 and civil rights litigation. During the search they threw away or destroyed Plaintiff's personal  
16 property. Plaintiff was also allowed to proceed against Filson and Wickham based on allegations  
17 that they were aware prison guards were conducting unnecessary retaliatory search of Plaintiff's  
18 cell based on his previous grievances, but did not act to prevent the retaliatory searches and  
19 continued to assign guards who had retaliated against Plaintiff to his unit. (*Id.* at 8.)

20 The court noted that none of the allegations implicated the Eighth Amendment, and as  
21 such, the Eighth Amendment claim was dismissed without prejudice. (*Id.* at 7-8.) In addition, the  
22 Fourteenth Amendment deprivation of property claim was dismissed without prejudice. (*Id.*)  
23

1 Finally, Plaintiff was allowed to proceed with a retaliation claim against defendants Ivie  
2 and Barfield in Count 3 based on allegations that they tampered with Plaintiff's meal in  
3 retaliation for his filing of a grievance, and as a result he had nothing to eat for dinner and went  
4 to bed hungry. (*Id.* at 9.)

5 The court noted that the allegations did not implicate the Fourteenth Amendment;  
6 therefore, that claim was dismissed without prejudice. (*Id.*) The court also found that Plaintiff  
7 failed to state a colorable free exercise of religion claim because Plaintiff did not allege that  
8 Defendants brought him a non-kosher meal in place of his regular meal. Instead, he alleged they  
9 brought him no edible food at all. The court concluded that the alleged failure to bring Plaintiff  
10 his dinner on a single occasion did not place a substantial burden on his practice of only eating  
11 kosher meals. Therefore, that claim was dismissed without prejudice. (*Id.* at 9-10.)

12 Defendants Drummond and Reubart were dismissed without prejudice because the  
13 complaint did not contain any allegations against them. (*Id.* at 10.)

14 Therefore, the defendants proceeding in the original complaint were: Adams, Barfield, V.  
15 Belt, Esquivel, Filson, D. Frazier, Herrera, Ivie, J. Mason, S. Mollett, A. Montes, Ornelas, J.  
16 Rivera, Wickham, and John Doe 1 (when Plaintiff learns his identity).

17 Plaintiff subsequently filed a motion for leave to amend, and a motion to exclude his case  
18 from mediation. (ECF Nos. 6, 7.) The latter motion was denied and the parties were unsuccessful  
19 in settling the case. (ECF No2. 9, 13.) The court then issued an order granting Plaintiff's  
20 application to proceed in forma pauperis, requiring him to pay the \$350 filing fee over time, and  
21 granted his motion for leave to file an amended complaint within 30 days. (ECF No. 15.)

22 Service of the original complaint was accepted by the Attorney General's Office on  
23 behalf of Michael Adams, Vince Belt, Daniel Esquivel, Alfredo Montes, Jesus Rivera

1 (erroneously named as J. Riveria), and Harold Wickham. Service was not accepted for former  
2 employees Joshua Barfield, Timothy Filson, Desean Frazier, Terri Herrera, Hawk Ivie, and  
3 Joseph Mason, but their last known addresses were filed under seal. Service was also not  
4 accepted for Javier Ornelas and Stephen Mollett as counsel was confirming the status of requests  
5 for representation of those individuals and would file an amended acceptance of service, if  
6 necessary. (ECF Nos. 16, 17.) The court issued summonses for Barfield, Filson, Frazier, Herrera,  
7 Ivie and Mason. (ECF No. 20.)

8 Plaintiff filed his first amended complaint (FAC) on January 8, 2020. (ECF No. 21.)

9 The service return for Ivie was filed indicating service on February 10, 2020. (ECF No.  
10 24.)

11 Defendants Adams, Belt, Esquivel, Montes, Ornelas, Rivera and Wickham filed an  
12 answer to the FAC on February 11, 2020. Curiously, the answer states that various of the  
13 defendants named in the FAC are not currently parties to the litigation even though they are  
14 named in the FAC and there has been no order dismissing them from the case (Mason, Barfield,  
15 Frazier, Ivie, Mollett, Filson, Beedle, McArdle, Drummond, Baltierra, Mele, Reubart, and John  
16 Doe 1). (ECF No. 25.)

17 Following the filing of the answer, as it standard protocol, the court issued a scheduling  
18 order. (ECF No. 26.)

19 Defense counsel never filed anything further regarding acceptance or non-acceptance of  
20 service for Javier Ornelas and Stephen Mollett. The service returns from the U.S. Marshals for  
21 service of the original complaint were subsequently returned as unexecuted for Filson, Frazier,  
22 and Mason. (ECF Nos. 30, 31, 32.)  
23

1 On February 27, 2020, Plaintiff filed a motion requesting that the court screen the FAC,  
2 and re-set the discovery schedule. (ECF No. 33.) Plaintiff's motion is granted, and the court will  
3 screen the FAC below. Defendants' answer to the FAC will be stricken as it was filed pre-  
4 screening of the FAC. While the court would typically exercise its discretion and not screen an  
5 amended complaint where the defendants had already filed an answer, the court will screen the  
6 FAC here because the answer seemingly ignores the fact that the FAC includes additional  
7 defendants and service on those new defendants has not been addressed. Moreover, the court will  
8 review the sufficiency of the claims asserted in the FAC so as to avoid future confusion as to  
9 which claims are proceeding and against whom.

## 10 **II. SCREENING**

11 The FAC names defendants: M. Adams, Joshua Barfield, K. Baltierra, Beedle, V. Belt,  
12 David Drummond, Daniel Esquivel, D. Timothy Filson, Frazier, H. Ivie, J. Mason, Michael  
13 McArdle, M. Mele, S. Mollett, A. Montes, J. Ornelas, William Reubart, J. Riveria, Harold  
14 Wickham, and John Doe 1.

### 15 **1. Claim 1**

16 In Claim 1, Plaintiff alleges that on December 10, 2017, while housed in Ely State  
17 Prison's (ESP) segregation unit, defendants Rivera, Mason, Belt, Frazier, Montes, Mollett and  
18 Beedle retaliated against him for filing lawsuits and grievances when they purposefully pulled  
19 Plaintiff out of his cell and performed a search of his cell while Plaintiff was placed in the  
20 housing unit shower cage in full restraints for six hours without bathroom breaks. Plaintiff avers  
21 that the officers destroyed Plaintiff's legal documents, religious books and materials on the  
22 advice of their supervising officer Montes. (ECF No. 21 at 11-12.)  
23

1 Officers Mollett and Beedle asked Plaintiff to strip for a body cavity search in a shower  
2 cage that had body fluids on the floor from previous prisoners who bathe, and Plaintiff had to  
3 kneel there and show his body cavity. He alleges this was purposefully done to harass, humiliate,  
4 intimidate and embarrass Plaintiff. (*Id.* at 12.)

5 Plaintiff avers that Rivera came to the shower cage and told Plaintiff the cell search was  
6 performed because of Plaintiff's lawsuits and grievances. Plaintiff asked Mason, Belt, Frazier  
7 and Montes to stop the search, but they failed to intervene for three hours. (*Id.* at 12.)

8 Plaintiff goes on to allege that Wickham, the warden, and Filson, the deputy director,  
9 knew of retaliation against Plaintiff by ESP staff for filing grievances and lawsuits from  
10 Plaintiff's past grievances, but as grievance responders they elected not to correct their  
11 subordinates' actions, but instead condoned their behavior. (*Id.* at 12-13.)

12 Plaintiff references the First, Eighth and Fourteenth Amendments.

### 13 **1. First Amendment Retaliation**

14 The retaliation standard can be found in the court's original screening order. Plaintiff  
15 states a colorable retaliation claim against defendants Belt, Filson, Frazier, Mason, Mollett,  
16 Montes, Rivera (erroneously named as Riveria) and Wickham.

### 17 **2. Eighth and Fourth Amendments**

18 There appear to be two potential components to Plaintiff's claims under the Eighth  
19 Amendment: (1) the body cavity search in the shower cage by Mollett and Beedle that Plaintiff  
20 asserts was done with the purpose to harass, humiliate, intimidate and embarrass; and (2) forcing  
21 Plaintiff to kneel in "body fluids" on the floor of the shower and then stand in the shower for six  
22 hours without bathroom breaks.

1       Insofar as Plaintiff alleges that his constitutional rights were violated by the strip search  
2 itself, the applicable amendment is the Fourth Amendment's right to be free from "unreasonable  
3 searches and seizures." U.S. Const., amend IV." Prisoners retain a limited Fourth Amendment  
4 right to shield themselves from being observed nude. *Michenfelder v. Sumner*, 860 F.2d 328,  
5 333-34 (9th Cir. 1988). The Supreme Court held in *Bell v. Wolfish*, 441 U.S. 520, 528 (1979) that  
6 routine visual body cavity searches performed to prevent the possession of weapons and  
7 contraband do not violate a prisoner's Fourth Amendment rights. The Ninth Circuit subsequently  
8 held that in general, strip searches do not violate the Fourth Amendment rights of prisoners,  
9 unless they are "excessive, vindictive, harassing, or unrelated to any legitimate penological  
10 purpose." *Michenfelder*, 860 F.2d at 332-33.

11       Construing Plaintiff's pro se claim that Mollett and Beedle conducted the strip search in  
12 order to harass, humiliate, intimidate and embarrass Plaintiff liberally, Plaintiff may proceed  
13 with his Fourth Amendment claim against Mollett and Beedle.

14       As to any claim that Plaintiff's Eighth Amendment conditions of confinement rights were  
15 violated when he was allegedly forced to kneel in the shower to show his body cavity during the  
16 strip search and then was standing in the shower cage for six hours without bathroom breaks,  
17 Plaintiff still fails to state a claim. He includes no further allegations than were included in the  
18 original complaint. Therefore, the conditions of confinement claim remains dismissed.

### 19       **3. Fourteenth Amendment**

20       As was the case with the original complaint, Plaintiff's allegations regarding the  
21 destruction of property do not implicate the Fourteenth Amendment; therefore, the Fourteenth  
22 Amendment claim will remain dismissed.

1 **2. Claim 2**

2 In Claim 2, Plaintiff alleges that on March 11, 2018, D. Esquivel, Adamas, Ornelas, and  
3 T. Herrera retaliated against him for filing a verbal complaint to the facility area sergeant.  
4 Plaintiff told the sergeant that Esquivel, Adamas, Ornelas, and Herrera were not doing their job  
5 with handing out supplies to inmates. When the sergeant left the housing unit, Herrera, Adamas,  
6 Ornelas, and Esquivel purposefully performed a cell search, destroying Plaintiff's personal  
7 property and legal documents. Esquivel, Herrera and M. Adams placed Plaintiff in the unit  
8 shower cage to conduct the unconstitutional search of his cell. He was placed into the shower  
9 cage in full restraints and was left that way while they searched and trashed Plaintiff's cell.  
10 Onrelas jointed the search, throwing away Plaintiff's pens, copy paper, envelopes and personal  
11 property and destroyed personal appliances and he did not get relief after filing a small claims  
12 complaint in justice court. M. Adams worked in the control tower and refused to notify the area  
13 sergeant.

14 Filson, the warden, and Wickham, the deputy director, were grievance responders  
15 regarding a prior unlawful search by Esquivel, and continued to assign Esquivel to Plaintiff's  
16 unit.

17 Like the original complaint, Plaintiff may proceed with a retaliation claim against  
18 defendants D. Esquivel, Adamas, Ornelas, and T. Herrera, Filson and Wickham.

19 Plaintiff also references the Eighth and Fourteenth Amendments. None of the allegations  
20 give rise to an Eighth Amendment claim. With respect to the Fourteenth Amendment, as with the  
21 original complaint, Plaintiff does not state a claim. Where a prisoner alleges a deprivation of a  
22 property interest caused by the unauthorized negligent or intentional action of a prison official,  
23 he does not state a constitutional claim where the state provides an adequate post-deprivation



1 remedy. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984); *Zinermon v. Burch*, 494 U.S. 113,  
2 129-132 (1990). This is because "when deprivations of property are effected through random and  
3 unauthorized conduct of a state employee, predeprivation procedures are simply 'impracticable'  
4 since the state cannot know when such deprivations will occur." *Hudson*, 468 U.S. at 533.  
5 Nevada provides a meaningful post-deprivation remedy for the loss of personal property. *See*  
6 Nev. Rev. Stat. § 41.041, §41.0322. While Plaintiff alleges that he ultimately did not get any  
7 relief after filing a small claims case in justice court, this does not mean that the state did not  
8 provide an adequate process to obtain post-deprivation remedy. *See Hudson*, 468 U.S. at 535  
9 ("[T]hat [the plaintiff] might not be able to recover under these remedies the full amount which  
10 he might receive in a §1983 action is not, as we have said, determinative of the adequacy of the  
11 state remedies."). Therefore, Plaintiff's Fourteenth Amendment due process claim in Claim 2  
12 remains dismissed.

### 13 **3. Claim 3**

14 Plaintiff alleges that on March 19, 2018, H. Ivie and J. Barfield purposefully refused to  
15 provide Plaintiff with his Islamic religious food kosher tray in retaliation for filing a grievance  
16 against their subordinate, Esquivel. Instead, they gave Plaintiff a food tray filled with empty  
17 wrappers and bitten of food. Plaintiff is a Muslim who was prescribed a kosher food religious  
18 diet to accommodate his religious beliefs. He avers that Ivie and Barfield denied him his right to  
19 practice his religious beliefs in retaliation for filing previous grievances against Esquivel.  
20 He references the First and Fourteenth Amendments.

21 Plaintiff may proceed with his retaliation claim in Claim 3 against Ivie and Barfield.

22 Plaintiff's allegations do not implicate the Fourteenth Amendment.  
23

Moreover, Plaintiff still does not state a First Amendment free exercise of religion claim in the FAC. Plaintiff alleges that Ivie and Barfield denied him his kosher meal on a single occasion. The Ninth Circuit and many district courts within it have held that an isolated or sporadic interference does not substantially burden the free exercise of religion. *See Canell v. Lightner*, 143 F.3d 1210, 1215 (9th Cir. 1998) (a "relatively short-term and sporadic" interference did not constitute a substantial burden"); *Thomas v. Cox*, No. 3:13-cv-00508-R CJ-CBC, 2019 WL 2509023, at \*7 (D. Nev. May 3, 2019), *report and recommendation adopted by* 2019 WL 2517788 (D. Nev. Jun. 17, 2019) (receiving a single improper kosher meal during Passover did not constitute a substantial burden on his right to free exercise of religion); *Torres Arboleda v. O'Banion*, No. 2:17-cv-0442-EFB P, 2019 WL 1206826 (E.D. Cal. Mar. 14, 2019) ("Courts in the Ninth Circuit (and elsewhere) have routinely held that the denial of a religious practice on a single, isolated occasion does not constitute a 'substantial burden' and thus does not violate the First Amendment."); *Pouncil v. Sherman*, No. 1:17-cv-00547-AWI-BAM (PC), 2018 WL 646105, at \*3 (E.D. Cal. Jan. 31, 2018) (allegation that inmate was denied meals on one night of Ramadan did not state a free exercise claim); *Murie v. Crossroads Corr. Ctr.*, No. CV 17-00005-GF-BMM-JTJ, 2017 WL 2265145, at \*3 (D. Mont. Feb. 24, 2017) (free exercise claim dismissed on screening because allegation that inmate was not allowed to attend a sweat lodge on a single occasion did not present a substantial burden); *Stidhem v. Schwartz*, 2:15-cv-00379-TC, 2017 WL 6887139, at \*3 (D.Or. Oct. 23, 2017), *report and recommendation adopted by* 2018 WL 358496 (D.Or. Jan. 10, 2018) (summary judgment granted on plaintiff's free exercise claim because a less than one-day suspension of plaintiff's kosher diet did not amount to a substantial burden); *Smith v. Cruzen*, No. 14-CV-04791 LHK (PR), 2017 WL 4865565, at \*4-5 (N.D. Cal. Oct. 26, 2017), *aff'd by* 735 Fed.Appx. 434 (9th Cir. 2018) (affirming grant of

1 summary judgment because no dispute of material fact that one-time prohibition on engaging in  
2 evening congregational prayer was not a substantial burden on plaintiff's free exercise of  
3 religion); *Chapparo v. Ducart*, No. 14-CV-4955 LHK (PR), 2016 WL 491635, at \*5 (N.D. Cal.  
4 Feb. 9, 2016), *aff'd* by 695 Fed.Appx. 254 (9th Cir. Aug. 14, 2017) (affirmed grant of summary  
5 judgment because four missed chapel services did not amount to a substantial burden on  
6 plaintiff's right of free exercise of religion); *Hampton v. Ayers*, No. CV 07-8130-RSWL (MAN),  
7 2011 WL 2565358, at \*15 (C.D. Cal. June 2, 2011), *report and recommendation adopted by*  
8 2011 WL 2563246 (C.D. Cal. June 28, 2011) (summary judgment granted because single  
9 incident of interrupting a religious service was not a substantial burden on plaintiff's religious  
10 exercise); *Howard v. Skolnik*, 372 Fed.Appx.781, 782 (9th Cir. 2010) (finding no genuine issue  
11 as to substantial burden on free exercise where claim involved two alleged incidents where  
12 prison personnel interfered with inmate's fasting); *Glover v. Evans*, No. C 07-2731 JSW (PR),  
13 2007 WL 3022249, at \*2 (N.D. Cal. Oct. 15, 2007) (religious exercise claim dismissed on  
14 screening because allegation of not being provided with religion-appropriate meal on a single  
15 occasion did not state a constitutional violation); *see also Rapier v. Harris*, 172 F.3d 999, 1006  
16 n. 4 (7th Cir. 1999) (unavailability of non-pork tray for 3 meals out of 810 meals did not  
17 substantially burden inmate's exercise of religion); *Hankins v. N.Y. State Dep't of Corr. Servs.*,  
18 No. 0:07-CV-0408 (FJS/GHL), 2008 WL 2019655, at \*5 (N.D.N.Y. Mar. 10, 2008) ("Courts  
19 from the Second Circuit have repeatedly found that an allegation that prison officials caused a  
20 prisoner to miss one religious service fails to state an actionable claim under the First  
21 Amendment."). Therefore, the First Amendment free exercise claim remains dismissed.

1 **4. Claim 4**

2 Plaintiff alleges that on July 26, 2019, he was escorted to ESP's visiting holding cell for a  
3 telephonic conference call with a Deputy Attorney General regarding an early case conference  
4 when Baltierra, Mele, M. McArdle and John Doe 1 retaliated against Plaintiff for filing/serving a  
5 state civil rights lawsuit. He avers that Baltierra had the escorting officers place him in a small  
6 visiting booth in total darkness and refused to turn on the lights so Plaintiff could take notes and  
7 review documents. He was there from 12:30 p.m. until 5:00 p.m. Defendant Mele stood by and  
8 allowed this to occur. Plaintiff goes on to allege that Baltierra and McArdle denied Plaintiff  
9 bathroom breaks and water while other inmates with outside visitors were allowed to use the  
10 bathroom and have water. Plaintiff claims that Baltierra told Plaintiff he should not have filed a  
11 lawsuit and she and others were going to make his life "hell at ESP." Plaintiff also contends he  
12 was not allowed to perform his daily prayers during this time period because there was no room  
13 in the visiting booth to do so. Nor was he permitted to wash for prayer or consume his religious  
14 meal for lunch.

15 Plaintiff alleges that John Doe 1 entered the control bubble and refused to send Plaintiff  
16 back to his housing unit.

17 Plaintiff contends that Drummond and Reubart (the associate wardens) were told about  
18 the wrongdoing of McArdle and Baltierra in the past via grievances and request forms before this  
19 incident, and how Plaintiff was purposely being left in the visiting holding cell/booths for  
20 extended periods of time, but no corrective action was ever taken.

21 Plaintiff may proceed with a retaliation claim against Baltierra, Mele, M. McArdle, and  
22 construing the allegations liberally, he may also proceed against Drummond and Reubart.  
23 Plaintiff only alleges that John Doe 1 entered the control bubble and refused to send Plaintiff

1 back to his unit, but includes no allegations giving rise to a retaliation claim against John Doe 1;  
2 therefore, John Doe 1 is dismissed without prejudice.

3 Plaintiff also references the First, Eighth and Fourteenth Amendments.

4 Plaintiff includes no allegations giving rise to a Fourteenth Amendment claim.

5 Insofar as Plaintiff alleges that while he was in the room he could not perform his daily  
6 prayers due to lack of space or consume his religious meal, as the court pointed out above,  
7 a relatively short-term or sporadic interference does not substantially burden the free exercise of  
8 religion. This claim will be dismissed without prejudice in the event there are facts Plaintiff can  
9 allege to cure the noted deficiency.

10 Plaintiff alleges that Baltierra and McArdle denied him access to water and restrooms  
11 while he was in the holding cell. Like his claim in Count I of the original complaint, Plaintiff  
12 does not allege that he asked for water or to use the restroom during this time period. In any  
13 event, the alleged deprivation of water and bathroom breaks by defendants Baltierra and  
14 McArdle for four and a half hours does not rise to the level of an Eighth Amendment violation.  
15 Courts have held that allegations involving a temporary delay in allowing a prisoner to use a  
16 restroom or have access to water fall short of establishing a constitutional violation. *See Johnson*  
17 *v. Lewis*, 217 F.3d 726, 733 (9th Cir. 2000) ("toilets can be unavailable for some period of time  
18 without violating the Eighth Amendment"); *Hartsfield v. Vidor*, 199 F.3d 305, 310 (6th Cir.  
19 1999) (denial of water and bathroom for two eight-hour periods on two days not cruel and  
20 unusual punishment); *Harley v. Quindiahjen*, No. 19cv1607-MMA (LL), 2019 WL 5578232, at  
21 \*4-5 (S.D. Cal. Oct. 29, 2019) (denial of access to water and a functioning toilet for less than a  
22 day was insufficient to state an Eighth Amendment claim); *Salinas v. County of Kern*, 1:18-cv-  
23 00235-BAM (PC), 2018 WL 5879703, at \*4 (E.D. Cal. Nov. 2018) (denial of access to a

1 restroom and water for approximately nine hours on a single day is insufficient to state an Eighth  
2 Amendment claim); *Saenz v. Reeves*, No. 1:09-cv-00557 BAM PC, 2012 WL 4049975, at \*14  
3 (E.D. Cal. Sept. 13, 2012) (denying prisoner access to toilet and water for five and one half hours  
4 on one occasion and four and one half hours on a separate occasion, while in a holding cell, were  
5 not sufficient to rise to the level of sufficiently serious deprivation to violate the Eighth  
6 Amendment); *Gunn v. Tilton*, No. CV 08-1039-PHX-SRB, 2011 WL 1121949, at \*4 (E.D. Cal.  
7 Mar. 23, 2011) (denial of access to water for six hours and restroom for three to four hours did  
8 not violate Eighth Amendment). Therefore, the Eighth Amendment claim will be dismissed. At  
9 this time, the dismissal will be without prejudice in the event there are additional facts upon  
10 which Plaintiff might be able to state a claim.

### 11 **III. CONCLUSION**

12 (1) Plaintiff's motion (ECF No. 33) is **GRANTED**. Plaintiff may proceed with the  
13 following claims in the FAC:

14 (a) A retaliation claim in Claim 1 against: Belt, Filson, Frazier, Mason, Mollett,  
15 Montes, Rivera and Wickham;

16 (b) A Fourth Amendment claim in claim 1 against Mollett and Beedle regarding  
17 the alleged strip search;

18 (c) A retaliation claim in Claim 2 against D. Esquivel, Adamas, Ornelas, and T.  
19 Herrera, Filson and Wickham;

20 (d) A retaliation claim in Claim 4 against Baltierra, Mele, McArdle, Drummond  
21 and Reubart in Claim 4.

22 (2) Defendants' answer to the FAC is **STRICKEN**.

1 (3) Within **21 days** of the date of this Order, the Attorney General's Office shall file a  
2 notice advising the court and Plaintiff: (a) whether it can accept service for: Adams, Baltierra,  
3 Beedle, Belt, Drummond, Filson, Esquivel, Frazier, Herrera, Mason, McArdle, Mele, Mollett,  
4 Montes, Ornelas, Reubart, Rivera, and Wickham; and (b) if it cannot accept service for any of  
5 those defendants, the names of the defendants for whom it does not accept service. As to any of  
6 the named defendants for whom the Attorney General's Office cannot accept service, the Office  
7 shall file, under seal, but shall not serve the inmate Plaintiff with the last known address(es) of  
8 those defendant(s) for whom it has such information. If the last known address of the defendant  
9 is a post office box, the Attorney General's Office shall attempt to obtain and provide the last  
10 known physical address(es).


11 (4) If service cannot be accepted for any of the named defendants, Plaintiff shall file a  
12 motion identifying the unserved defendant(s), requesting issuance of a summons, and specifying  
13 the full name and address of the defendants (if a last known address is not filed under seal).

14 (5) For those defendants for whom the Attorney General's Office accepts service, such  
15 defendants shall file and serve an answer or other response to the FAC within **60 days** of the date  
16 of this Order.

17 (6) The current scheduling order deadlines are **VACATED**. The court will issue a new  
18 scheduling order after service of the FAC is effectuated and an answer or other responsive  
19 pleading is filed.

20 **IT IS SO ORDERED.**

21 Dated: March 4, 2020

22   
23 William G. Cobb  
United States Magistrate Judge